C is such that B, as heir, would be entitled thereto, B cannot take both his legacy and C's intended portion, but must elect between the two. *Van Dyke's Appeal*, 60 Pa. St. 481. See 23 HARV. L. REV. 138. Where the gift to C is invalid, by the *lex domicilii*, there is no will and consequently no election. *Hearle* v. *Greenbank*, 1 Ves. Sen. 298, 306; *Sheddon* v. *Goodrich*, 8 Ves. Jr. 481. See *Boughton* v. *Boughton*, 2 Ves. Sen. 12, 14. If, however, there is an express condition to elect, it is enforced. *Boughton* v. *Boughton*, *supra*. But where it is inoperative because of *lex rei sitae* of a foreign jurisdiction election is applied. *Dundas* v. *Dundas*, 2 Dow & Cl. 349; *Brodie* v. *Barry*, 2 Ves. & Beav. 127; *Van Dyke's Appeal*, *supra*. See 2 DICEY, CONFLICT OF LAWS, 2 ed., 778, 779. The election, however, when made, does not affect the title to the foreign realty. *Bolton* v. *Bolton*, 29 Ark. 418; *Ramels* v. *Rowe*, 92 C. C. A. 177, 166 Fed. 425; *Palmer* v. *Voorhis*, 35 Barb. (N. Y.) 479. See STORY, CONFLICT OF LAWS, 8 ed., § 448. Yet it is generally enforced by the jurisdiction of the situs. *Van Steenwyck* v. *Washburn*, 59 Wis. 483, 17 N. W. 289; *Martin* v. *Battey*, 87 Kan. 582, 125 Pac. 88; *Wilson* v. *Cox*, 49 Miss. 538. *Contra*, *Ramels* v. *Rowe*, *supra*. Some suggest that the doctrine rests simply on equitable principles. See 30 HARV. L. REV. 649; 1 JARMAN, WILLS, 6 ed., 534; 1 POMEROY, EQUITY, 3 ed., § 465. But see *Cooper* v. *Cooper*, L. R. 7 H. L. 53, 70. This view would not change the result in the principal case, for in an analogous situation, where B's property was given to C, B had to elect. *Noys* v. *Mordant*, 2 Vern. 581; *Cooper* v. *Cooper*, *supra; Havens* v. *Sackett*, 15 N. Y. 365. But the prevailing view is that it is based on the presumed intention of the testator. *Whistler* v. *Webster*, 2 Ves. Jr. 366; *Jackson* v. *Bevins*, 74 Conn. 96, 49 Atl. 899; *Cooper* v. *Cooper*, *supra; Havens* v. *Sackett*, *supra; Martin* v. *Battey*, *supra*. See Haynes, "Outlines of Equity," 262 *et seq.*, 23 HARV. L. REV. 138. And it seems, as is said in the principal case, that election is merely the application of the *lex domicilii* imposing conditions on the receipt of the legacy over which it has power. Thus it is a mere rule of construction, enforcing the presumed intention of the testator.

CONTRACTS — CONTRACTS FOR THE BENEFIT OF A THIRD PERSON — CHARTERPARTIES — RIGHT OF CHARTERERS TO RECOVER COMMISSION FROM SHIPOWNERS AS TRUSTEES FOR BROKERS. — A clause in a charterparty provided that a three per cent commission on the amount of hire should be paid to the brokers, "ship lost or not lost." No hire was earned, since the vessel was taken over by the French government. *Held*, that the charterers could recover the commission as trustees for the brokers. *Walford* v. *Les Affréteurs Réunis Société Anonyme*, [1918] 2 K. B. 498.

The English courts have in the past been obliged to stretch the law of trusts in order to avoid the consequences of their doctrine, which prevails in a small minority of American jurisdictions, that a person not a party to a contract cannot sue on a promise made for his benefit. *Moore* v. *Darton*, 4 DeG. & S. 517. See 15 HARV. L. REV. 767, 775. Various efforts have been made to evade the rule. See *Mellen* v. *Whipple*, 1 Gray (Mass.) 317, 323. The device of an implied trust has been employed in a number of cases. *Swan* v. *Snow*, 11 Allen (Mass.) 224; *Munroe* v. *Fireman's Relief Association*, 19 R. I. 363, 34 Atl. 149; *Lloyds* v. *Harper*, 16 Ch. D. 290; *In re Flavell*, 25 Ch. D. 89; *contra*, *West* v. *Houghton*, 4 C. P. D. 197. See *Cleaver* v. *Mutual Reserve Fund*, [1892] 1 Q. B. 147, 152. The principal case follows a similar decision in regard to charter parties handed down without opinion in 1853. *Robertson* v. *Wait*, 8 Exch. 299. Perhaps most of the English cases can be reconciled in result, if not on principle, on the ground that where a business relation exists between promisee and beneficiary an agreement by the promisee to act as trustee of his technical right of action can be implied, but not in cases of pure gifts. Certainly there is strong reason in business contracts to find some way of enforcement. The whole

machinery, however, is obviously fictitious. If the fiction is to be employed, there seems to be no good reason why it should not be applied to all contracts for the sole benefit of a third person. The correct and frank method would be to give the sole beneficiary a right of action in his own name. The New York court recently threw off the old shackles. *Seaver* v. *Ransom*, Ct. App. (N. Y.), October 1, 1918. See 32 HARV. L. REV. 82. It is hoped that the English courts will have the courage to do as much.

CORPORATIONS — *Ultra Vires:* WHAT ACTS ARE *Ultra Vires* — ILL-DEFINED OBJECTS OF INCORPORATION. — The memorandum of association of a company contained an objects clause enabling the company to carry on almost every conceivable kind of business which such an organization could adopt. Escape from liability was sought for an act done in the name of the company by its managers on the ground that the act was *ultra vires*. *Held*, that, under such a memorandum, the act was not *ultra vires*. *Cotman* v. *Brougham*, [1918] A. C. 514.

For a discussion of this case, see NOTES, page 279.

EQUITABLE SERVITUDES — COVENANT BY ASSIGNEE OF COPYRIGHT TO PAY ROYALTIES — VENDOR'S LIEN. — Assignee of a copyright covenanted to pay certain royalties and to assign only to successors in business subject to the terms of the deed assigning the copyright. In an action by the covenantee against a subsequent assignee of the copyright with notice of the covenant, *held*, that the subsequent assignee was under no contractual liability to pay royalties; that the original assignment and covenant therein did not make the royalties a charge upon the copyright, and that as the original deed of assignment did not make the royalties a part of the purchase money it did not have the effect of reserving a vendor's lien for unpaid royalties. *Barker* v. *Stickney*, [1918] 2 K. B. 356.

For further discussion of the principles involved, see NOTES, page 278.

EVIDENCE — PRIVILEGED COMMUNICATIONS — ATTORNEY AND CLIENT — COMMUNICATION MADE UNDER MISTAKE TO ATTORNEY OF OPPOSITE PARTY. — Shortly after a highway accident, the solicitor of the prospective defendant called on the injured party and secured from her a signed statement in regard to the collision. Although there was no fraud, the plaintiff signed in the belief that she was making the statement to her own solicitor. Plaintiff applied for discovery. *Held*, that the document was privileged. *Feuerheerd* v. *London Omnibus Co.*, [1918] 2 K. B. 565; 53 L. J. 332.

Communications between attorneys and their clients in relation to legal interests have long been privileged. *Minet* v. *Morgan*, L. R. 8 Ch. 361; *Crosby* v. *Berger*, 4 Edw. (N. Y.) 254 (affirmed in 11 Paige, 377). This means that the communication cannot be used as evidence without the consent of the client. See 4 WIGMORE, EVIDENCE, § 2324. The modern ground for the rule is the need of freedom in consultation with attorneys. *Hatton* v. *Robinson*, 14 Pick. (Mass.) 416; *Wade* v. *Ridley*, 87 Me. 368, 32 Atl. 975. See 4 WIGMORE, EVIDENCE, § 2291. On the same principle the client should not bear the dangerous burden of using more than a due precaution in selecting his attorney. Hence the privilege has been properly extended to cases of *bona fide* belief in the alleged attorney's professional status. *People* v. *Barker*, 60 Mich. 277, 27 N. W. 539; *State* v. *Russell*, 83 Wis. 330, 53 N. W. 441; *Rex* v. *Choney*, 17 Manitoba, 467. See 4 WIGMORE, EVIDENCE, §§ 2302, 2310. However, a communication made to a solicitor known to be acting as counsel for the opposite party has been rightly held not privileged. *Tobakin* v. *Dublin Tramways Co.*, [1905] 2 Ir. Rep. 58. In former cases the communication was procured